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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/254,005	03/01/1999	TAKAFUMI ATARASHI	Q53451	6345

7590

06/12/2002

SUGHRUE MION ZINN MACPEAK & SEAS  
2100 PENNSYLVANIA AVENUE NW  
WASHINGTON, DC 20037

EXAMINER
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KRUER, KEVIN R

ART UNIT	PAPER NUMBER
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1773

16

DATE MAILED: 06/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/254,005

Applicant(s)

ATARASHI ET AL.

Examiner

Kevin R Kruer

Art Unit

1773

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 06 June 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
 ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
 2. ☐ The proposed amendment(s) will not be entered because:  
 (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ they raise the issue of new matter (see Note below);  
 (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.  
 6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
 7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE.Claim(s) objected to: NONE.Claim(s) rejected: 1,3 and 5-8.Claim(s) withdrawn from consideration: NONE.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
 9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
 10. ☒ Other: see attached

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***Advisory Action******Advisory Action***

Applicant argues that Atarashi (US 5,763,085) fails to teach a coated powder in which the consolidated powder is arranged at the same distance from one another in a given direction. Specifically, Applicant disagrees with the examiner's conclusion that the particles taught in Atarashi, when applied as a toner via magnetic brush, meets the above-mentioned claim limitation. In support of their position, Applicant has filed a series of figures to illustrate how they believe toner will consolidate. However, there is nothing on record to support such an illustration. Applicant is reminded that arguments of counsel cannot take the place of evidence in the record. Furthermore, Applicant's illustrations are contrary to the teachings of US3,941,469; US3,654,902; and US3,557,751. Each of these references suggests that the application of toner via a magnetic brush results in a uniform application of toner. Thus, Applicant's arguments are not persuasive.

Applicant further argues that the consolidated material of the present invention reflect a specific wavelength of light. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the reflection of a certain wavelength of light) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Furthermore, there does not seem to be support in the original disclosure for such an allegation.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R Kruer whose telephone number is 703-305-0025. The examiner can normally be reached on Monday-Friday from 7:00a.m. to 4:00p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau, can be reached on (703) 308-2367. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

*KRK*

KRK

*Paul Thibodeau*

Paul Thibodeau  
Supervisory Patent Examiner  
Technology Center 1700